

90 non/ident  
w/ w/o functional  
language

Souaya, Jehanne

**From:** Myers, Carla  
**Sent:** Tuesday, February 27, 2001 8:49 AM  
**To:** Souaya, Jehanne  
**Subject:** RE: 95% SEQUENCE IDENTITY

Jehanne,

I think with 95% identity and high stringency conditions you still need to include functional language, so that the claims exclude allelic variants having a different functional activity from the encoded protein disclosed in the spec (I would only make the written description rejection over these claims, not scope, i.e., applicants were not in possession of allelic variants having altered functional activity). With the moderate stringency conditions, I would probably also include a scope rejection since, depending on the definition provided in the spec, the claims could include molecules with 60-70% identity and argue that it is unpredictable as to which molecules would be functional, unpredictable as to how you can modify the molecule without altering its biological activity, etc.

Carla

-----Original Message-----

**From:** Souaya, Jehanne  
**Sent:** Monday, February 26, 2001 4:07 PM  
**To:** Myers, Carla  
**Subject:** 95% SEQUENCE IDENTITY  
**Importance:** High

Carla,

Are you letting polynucleotide claims through with 95% seq identity to a particular SEQ ID NO, if there is no functional language (I'm thinking you're going to say no). what about with hybridization conditions, moderate, stringent?

Jehanne

BJ - I know you already did the case  
w/ 95% identity & hybridization language - but  
just to give you Carla's perspective on these  
types of claims (for when their arguments come back) -

→ the first 3 lines of her response to my  
question seem directly applicable to your  
claims. W.D. rejection was appropriate.

Jehanne